

**IN THE UNITED STATES DISTRICT COURT FOR
THE EASTERN DISTRICT OF OKLAHOMA**

UNITED STATES OF AMERICA,)	
)	
Plaintiff,)	
vs.)	CIV 08-426-FHS
)	
1)JAMES MICHAEL MCBRAYER;)	
a.k.a. James M. McBrayer;)	
a.k.a. J. Michael McBrayer; et al.,)	
Defendants.)	

JOURNAL ENTRY OF JUDGMENT

This matter comes on to be heard this 17th day of June, 2009, upon the issues in plaintiff's complaint filed herein; the plaintiff, United States of America, appearing by Jeanette Windsor, Assistant United States Attorney for the Eastern District of Oklahoma; the defendants, James Michael McBrayer and Kara Jane McBrayer, appearing by their attorney, Joey Schmidt; the defendant, Bryan County National Bank, now Shamrock Bank, appearing by its attorney, David Youngblood; the defendant, Landmark Bank, N.A., appearing by its attorney, David Mordy; the defendant, Landmark Bank, N.A., Successor to Heritage National Bank of Davis, Oklahoma, appearing by its attorney, David Mordy; the defendant State of Oklahoma, ex rel Oklahoma Tax Commission, appearing by its attorney, Julie Ezell, the defendants Board of County Commissioners of Johnston County and the County Treasurer of Johnston, appearing by their attorney, Charles Migliorino; the defendant, Deere & Company, appearing by its attorney, Richard C. Ogden; the defendant, First United Bank & Trust Company, having filed their disclaimer herein; the Court carefully inspects and examines the files, records, and processes herein and finds that subsequent to the filing of plaintiff's complaint in this action finds as follows:

NOW, the Court proceeds instanter to consider plaintiff's complaint, and carefully examines the exhibits attached thereto, including the notes, and real estate mortgages, and upon conclusion, after being fully advised in the premises both as to the facts and the law, finds and adjudges the plaintiff has fully sustained all of the allegations of its complaint; the Court further finds that the plaintiff is entitled to and is hereby given a judgment in rem and in personam against the defendants, James Michael McBrayer and Kara Jane McBrayer, as prayed for in plaintiff's complaint.

And the Court more specifically finds:

That James Michael McBrayer and Kara Jane McBrayer, on or about the following dates and in the indicated amounts, executed and delivered to plaintiff a total of five promissory notes as follows:

<u>Instrument</u>	<u>Date</u>	<u>Amount</u>	<u>Interest</u>	<u>Number of Installments</u>
Note	01-12-05	\$252,623.83	3.75%	15
Note	01-12-05	\$ 85,889.54	3.875%	15
Note	01-12-05	\$ 76,043.55	3.75%	15
Note	01-12-05	\$224,149.76	5%	34
Note	01-12-05	\$151,405.22	3.75%	15

Further, that in order to secure the payment of said promissory notes, the makers thereof, made, executed and delivered to plaintiff, their certain real estate mortgages that were dated and filed as follows:

<u>Instrument</u>	<u>Filed</u>	<u>Book</u>	<u>Page</u>
Mortgage	09-30-99	167	29
Mortgage	02-25-00	170	32
Mortgage	04-03-01	178	79
Mortgage	03-12-03	195	542
Mortgage	01-12-05	212	711

Said mortgages conveyed and mortgaged to plaintiff the following described real property situated in Johnston County, Oklahoma, to-wit:

The W2 of SW4 of Section 15, Township 3 South, Range 7 East and the N2 of SW4 and SW4 of NW4 of Section 35, Township 3 South, Range 7 East of the Indian Base and Meridian containing 200 acres, more or less, according to the government survey thereof, less and except right-of-way and other utility easements, Johnston County, Oklahoma

And

Lots 12, 13, 14, E2 15, W2 15, 16, Block 44 City of Milburn

As collateral security for payment of the above listed promissory notes, the defendants, James Michael McBrayer and Kara Jane McBrayer, executed and delivered to plaintiff certain security agreements thereby creating in favor of the plaintiff, a security interest in certain crops, livestock, farm equipment and motor vehicles described therein.

The security interest of plaintiff in said property was perfected by Financing Statements filed with the County Clerks of the following counties on the dates indicated, and under the file numbers indicated.

<u>Type</u>	<u>Dated</u>	<u>Filed</u>	<u>County</u>	<u>File Number</u>
Financing Stmt	02-05-97	Johnston		27
Financing Stmt	02-05-97	Atoka		654
Financing Stmt	03-05-98	Johnston		581
Financing Stmt	03-09-98	Atoka		2076
Financing Stmt	02-25-00	Johnston		Not legible
Financing Stmt	09-04-01	Oklahoma		2001006662427
Continuation Stmt	08-29-06	Oklahoma		E2006010539632
Financing Stmt	03-03-03	Oklahoma		2003002481525
Continuation Stmt	02-25-08	Oklahoma		E2008002067732
EFS-1	02-06-97	Secretary of State		9700834
EFS-2	09-24-01	Secretary of State		199700834-M
EFS-2	09-20-06	Secretary of State		199700834-C
Motor Vehicle Lien	02-05-97			9700363503A7625

That the said defendants have defaulted in the payments provided in said notes, mortgages and security agreements, and have not paid the same in the amounts and at the times they agreed to pay the same, and by reason thereof, there is now due and owing the principal sum of \$774,520.50, plus interest accrued through November 4, 2008, in the amount of \$67,324.29, plus interest from that date at the daily rate of \$87.4838 until the date of judgment, and thereafter at the legal rate until paid in full, plus all costs and future costs of this action, including maintenance and protection fees; that by reason of the aforementioned default, plaintiff has elected to declare the entire principal balance and accrued interest thereon due and payable at once.

Further, that the said mortgage expressly provides that if the borrowers default in the payment of the debt secured thereby, the mortgagee may foreclose said mortgage and sell the mortgaged property at foreclosure sale and apply the proceeds from such sale on the said debt; and that appraisal of said premises is expressly waived or not waived at the option of the mortgagee; and that plaintiff mortgagee states that it desires to have said real property sold with appraisal.

That a portion of the above legal description has been foreclosed on by a prior lienholder, therefore, the following legal description is not being foreclosed upon in this action:

Lots 12, 13, 14, E2 15, W2 15, 16, Block 44 City of Milburn

Accordingly, only the following described real property remains to be foreclosed in this action:

The W2 of SW4 of Section 15, Township 3 South, Range 7 East and the N2 of SW4 and SW4 of NW4 of Section 35, Township 3 South, Range 7 East of the Indian Base and Meridian containing 200 acres, more or less, according to the government survey thereof, less and except right-of-way and other utility easements, Johnston County, Oklahoma

Further, that the defendants, Board of County Commissioners of Johnston County, Oklahoma and County Treasurer of Johnston County, Oklahoma, answered claiming some right, title, and interest in and to the property which is the subject of this action by virtue of a tax lien obtained against the defendants. However, the ad valorem taxes have been paid and now, no taxes are due and owing.

Further, that the defendant, Bryan County National Bank, now Shamrock Bank, is claiming some right, title and interest on certain equipment which is the subject of this action as set forth on its UCC Financing Statement filed April 18, 2002 in Oklahoma County under Document Number 2002004831222. Said lien is on the following equipment:

Sanders Truck Lift Model SB-75410 Serial No. G022132

KD Monitor Fork Lift Model T60 2 TC D Serial No. 530135

The claim of Bryan County National Bank, now Shamrock Bank, as of May 22, 2009, is in the amount of \$14,486.36 with interest accruing at the daily rate of \$3.18, plus costs in the amount of \$250.00.

Further, that the defendant, Deere & Company, is claiming some right, title and interest on certain equipment which is the subject of this action. Deere and Company is the holder of a perfected purchase money security interest in the following personal property:

(1) Land Pride AM 4522 Finish Mower s/n 410627;

(1) JD 200 Skid Steer Loader s/n 103368; and

(1) JD 5300 Utility Tractor s/n 532058.

Deere's claim is valued in the amount of \$39,107.35 through February 15, 2009 with interest accruing thereafter at the contract amount of \$3.32 per day and includes Deere and Company's costs

and reasonable attorney's fee in this action. That the lien of the plaintiff on this equipment is inferior to the lien of this defendant.

Further, the defendants, James Michael McBrayer and Kara Jane McBrayer have answered plaintiff's complaint in this action, stating they have signed certain notes, mortgages and security agreements. Defendants also admit they are delinquent on the notes, mortgages and security agreements.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED BY THE COURT:

1. That the plaintiff have judgment in rem and in personam against the defendants, James Michael McBrayer and Kara Jane McBrayer.

2. That the mortgage lien of the plaintiff, United States of America, be and the same is hereby established as a first, prior and superior lien on the remaining real estate and premises hereinbefore described, and that such mortgage lien be and the same is hereby ordered foreclosed, and the remaining property is hereby ordered appraised and sold by Judicial Sale in the manner provided by said mortgage and by the provisions of Title 28 U.S.C. §2001 et seq.

3. That should a sale and confirmation occur, the defendants, James Michael McBrayer, Kara Jane McBrayer, Board of County Commissioners of Johnston County, Oklahoma, County Treasurer of Johnston County, Oklahoma, State of Oklahoma, ex rel Oklahoma Tax Commission, Bryan County National Bank, now Shamrock Bank, Landmark Bank, N.A., and Landmark Bank, N.A., Davis, Oklahoma, Successor to Heritage National Bank of Davis, Oklahoma and each of them, have no right, title, or interest in or to said remaining mortgaged real property, or any part thereof; and that said defendants, and each of them, and all persons claiming by, through or under them, be and are hereby perpetually barred, restrained and enjoined from ever claiming or asserting any right,

title or interest in or to the said mortgaged property, hereinbefore described, which is adverse or hostile to the purchaser at sale except for claim of Deere & Company as to the above described chattel.

4. That any one in possession of subject property should relinquish possession upon the receiving of the journal entry of judgment. If such possession is not relinquished at that time, a Writ of Assistance will be issued.

5. That the defendant, Deere & Company, have judgment in personam against the defendants, James Michael McBrayer and Kara Jane McBrayer in the amount of \$39,107.35 through February 15, 2009 with interest accruing thereafter at the contract amount of \$3.32 per day which includes Deere and Company's costs and reasonable attorney's fee in this action.

6. That the proceeds from the sale of the following personal property:

(1) Land Pride AM 4522 Finish Mower s/n 410627;

(1) JD 200 Skid Steer Loader s/n 103368; and

(1) JD 5300 Utility Tractor s/n 532058

be applied as follows:

FIRST: To the payment of costs of this action, including the cost of foreclosure sale;

SECOND: To the satisfaction of the judgment in favor of Deere & Company, in the amount of \$39,107.35 through February 15, 2009 with interest accruing thereafter at the contract amount of \$3.32 per day;

THIRD: To the satisfaction of the judgment in favor of the plaintiff, in the amount of \$774,520.50 plus interest through November 4, 2008, in the amount of \$67,324.29 plus interest from that date at the daily rate of \$87.4838, until the date of judgment, plus interest from the date of judgment at the legal rate of .54% per annum computed daily and

compounded annually until paid in full, plus all costs and future costs of this action; including maintenance and protection fees;

FOURTH: The residue, if any, to be paid into the office of the Clerk of this Court to abide the further Order of this Court.

7. That the defendant, Bryan County National Bank, now Shamrock Bank has a lien against the defendants, James Michael McBrayer and Kara Jane McBrayer as of May 22, 2009, in the amount of \$14,486.36 with interest accruing at the daily rate of \$3.18, plus costs in the amount of \$250.00.

8. That the proceeds from the sale of the following personal property:

Sanders Truck Lift Model SB-75410 Serial No. G022132

KD Monitor Fork Lift Model T60 2 TC D Serial No. 530135

be applied as follows:

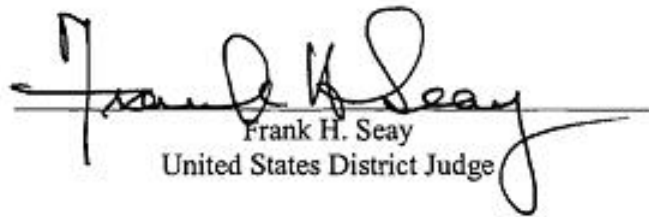
FIRST: To the satisfaction of the lien of Bryan County National Bank, now Shamrock Bank, as of May 22, 2009, in the amount of \$14,486.36, with interest accruing at the daily rate of \$3.18, plus costs in the amount of \$250.00;

SECOND: To the satisfaction of the judgment in favor of the plaintiff, in the amount of \$774,520.50 plus interest through November 4, 2008, in the amount of \$67,324.29 plus interest from that date at the daily rate of \$87.4838, until the date of judgment, plus interest from the date of judgment at the legal rate of .54% per annum computed daily and compounded annually until paid in full, plus all costs and future costs of this action; including maintenance and protection fees;

THIRD: The residue, if any, to be paid into the office of the Clerk of this Court to abide the further Order of this Court.

9. That the proceeds from the sale of said mortgaged real property be applied as follows:

- FIRST: To the payment of costs of foreclosure sale;
- SECOND: To the satisfaction of the judgment in favor of the plaintiff, in the amount of \$774,520.50 plus interest through November 4, 2008, in the amount of \$67,324.29 plus interest from that date at the daily rate of \$87.4838, until the date of judgment, plus interest from the date of judgment at the legal rate of .54% per annum computed daily and compounded annually until paid in full, plus all costs and future costs of this action; including maintenance and protection fees;
- THIRD: The residue, if any, to be paid into the office of the Clerk of this Court to abide the further Order of this Court.



Frank H. Seay
United States District Judge

USA v McBrayer
CIV 08-426-FHS
Journal Entry

APPROVED AS TO FORM;

SHELDON J. SPERLING
United States Attorney

S/JEANETTE WINDSOR
JEANETTE WINDSOR O.B.A. 16939
Assistant U.S. Attorney
1200 West Okmulgee
Muskogee, Oklahoma 74401
918-684-5100
918-684-5130 - fax
jeanette.windsor@usdoj.gov

USA v McBrayer
CIV 08-426-FHS
Journal Entry

STATE OF OKLAHOMA, ex rel
Oklahoma Tax Commission
Defendant

S/JULIE M. EZELL
JULIE M. EZELL, O.B.A. 21168
Assistant General Counsel
120 N. Robinson, Suite 2000W
Oklahoma City OK 73102-7801
405-319-8550
405-602-7121 - fax

USA v McBrayer
CIV 08-426-FHS
Journal Entry

BRYAN COUNTY NATIONAL BANK,
NOW SHAMROCK BANK
Defendant

S/DAVID YOUNGBLOOD
DAVID YOUNGBLOOD O.B.A. 11021
P O Box 540
Atoka OK 74525
580-889-3511
580-889-7149 - fax

USA v McBrayer
CIV 08-426-FHS
Journal Entry

BOARD OF COUNTY COMMISSIONERS
OF JOHNSTON COUNTY, OKLAHOMA
Defendant

COUNTY TREASURER OF
JOHNSTON COUNTY, OKLAHOMA
Defendant

S/CHARLES MIGLIORINO
CHARLES MIGLIORINO O.B.A. 11141
Assistant District Attorney
403 West Main Street, Suite 202
Tishomingo OK 73460
580-371-2379
580-371-3127 - fax

USA v McBrayer
CIV 08-426-FHS
Journal Entry

S/JAMES MICHAEL MCBRAYER
Defendant

S/KARA JANE MCBRAYER
Defendant

S/JOEY D. SCHMIDT
JOEY D. SCHMIDT O.B.A. 11507
Central Law Office
P O Box 720633
Norman OK 73070
405-329-5777
405-329-3841

USA v McBrayer
CIV 08-426-FHS
Journal Entry

LANDMARK BANK, N.A., DAVIS, OKLAHOMA
Defendant

LANDMARK BANK, N.A., DAVIS, OKLAHOMA
SUCCESSOR TO HERITAGE NATIONAL BANK
OF DAVIS, OKLAHOMA
Defendant

S/DAVID G. MORDY
DAVID G. MORDY, O.B.A. 11144
P O Box 1785
Ardmore OK 73401-1785
580-224-9994

USA v McBrayer
CIV 08-426-FHS
Journal Entry

DEERE & COMPANY
Defendant

S/RICHARD C. OGDEN
RICHARD C. OGDEN O.B.A. 13749
3030 Oklahoma Tower
210 West Park Avenue
Oklahoma City OK 73102
405-232-3800
405-232-8999 - fax